

HAWAII ADMINISTRATIVE RULES

TITLE 17

DEPARTMENT OF HUMAN SERVICES

SUBTITLE 5

HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF
HAWAII

CHAPTER 2021

GRIEVANCE PROCEDURE

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Historical Note: Chapter 17-2021, Hawaii Administrative Rules, is based substantially upon chapter 17-502, Hawaii Administrative Rules, [Eff 1/1/81; am and comp 5/26/98; R Oct 25 1999], and chapter 15-183, Hawaii Administrative Rules, [Eff 02/25/02; R]

SUBCHAPTER 1

GENERAL PROVISIONS

§17-2021-1 Purpose. These rules shall govern the practice and procedure for hearing a grievance presented by a tenant of a federally-assisted public housing project or state-aided public housing project to the housing and community development corporation of Hawaii. [Eff] (Auth: 24 CFR §966.52, HRS §§201G-4) (Imp: 24 CFR §966.50, HRS §201G-4)

§17-2021-2 Applicability. (a) The grievance procedure shall be applicable to all individual grievances as defined in section 17-2021-3 between the tenant of the federally-assisted public housing

projects or the state-aided public housing projects and the corporation.

(b) The grievance procedure shall not be applicable to disputes between tenants not involving the corporation, or class grievances~~[, or any grievance concerning an eviction or termination of tenancy based upon a tenant's creation or maintenance of a threat to the health or safety of other tenants or the corporation's employees]~~. This procedure shall not be used as a forum for initiating or negotiating policy changes between tenants and the corporation.

(c) All grievances involving an act or omission of the corporation relating to a rental agreement shall be commenced within thirty days of such act or omission.

(d) All grievances involving the corporation's rules shall be commenced within ninety days of an act or omission based on such rule.

(e) The failure to timely request such a hearing within the prescribed limits shall preclude any request for a grievance hearing from occurring unless waived by the corporation. [Eff]
(Auth: 24 CFR §966.52; HRS §§201G-4, 201G-17) (Imp: 24 CFR §966.51; HRS §201G-4)

§17-2021-3 Definitions. Whenever used in this chapter, unless specifically defined:

"Complainant" means any tenant whose grievance is presented to the corporation or at the project management office.

"Corporation" means the housing and community development corporation of Hawaii.

"Drug-related criminal activity" means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, or use the drug.

"Federally-assisted public housing projects" means a low-income federal assisted public housing project as established by the United States Housing Act of 1937, as amended.

"Grievance" means any dispute which a tenant may have with respect to the corporation's action or failure to act in accordance with the individual tenant's rental agreement or the corporation's rules which adversely affect the individual tenant's rights, duties, welfare, or status.

"Hearing officer" means a person selected in accordance with sections 17-2021-12 and 17-2021-32 to hear grievances and render a decision with respect thereto.

"Hearing panel" means a panel selected in accordance with sections 17-2021-12 and 17-2021-32 to hear grievances and render a decision with respect thereto.

"State-aided public housing projects" means the housing projects of Hauiki, Puahala, Lokahi, Kawailehua (State), Ka Hale Mua (State), Ke Kumu Elua, Hale Po'ai, Halia Hale, Kaimalu, Ho'olulu, and Lai'ola, which are owned by the corporation.

"Tenant" means the lessee or the remaining head of household of any family residing in the corporation's federally-assisted or state-aided public housing projects. [~~as defined in section 17-2028-2.~~]
[Eff _____] (Auth: 24 CFR §966.52; HRS §§201G-4, 201G-17) (Imp: 24 CFR §966.53; HRS §201G-4)

§17-2021-4 Termination of rental agreement based on Public Law 104-120. The corporation may also terminate a rental agreement [~~as provided for in section 17-2028-48.~~] pursuant to 42 U.S.C. §1437 as it existed on _____. [Eff _____]
(Auth: 42 USC §1437; Pub. L. 104-120; HRS §§201G-4, 201G-17, 201G-59) (Imp: HRS §201G-52)

SUBCHAPTER 2

PRE-HEARING PROCEDURE

§17-2021-10 Informal settlement of grievances.

(a) Any grievance shall be personally presented, either orally or in writing, to the project office of the project in which the complainant resides as a condition precedent to a hearing under this chapter.

(b) A summary of such discussion shall be prepared within fifteen days and one copy shall be given to the tenant. The summary shall specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefor, and shall specify the procedures by which a hearing under this chapter may be obtained if the complainant is not satisfied. [Eff] (Auth: 24 CFR §966-52; HRS §201G-4) (Imp: 24 CFR §966.54; HRS §201G-4)

§17-2021-11 Request for hearing. (a) The complainant shall submit a written request for a hearing to the corporation's project office within thirty days after receipt of the summary of discussion pursuant to section 17-2021-10. The written request shall specify:

- (1) The reasons for the grievance; and
- (2) The action or relief sought.

(b) If the complainant does not request a hearing in accordance with subsection (a), the corporation's disposition of the grievance following the informal settlement shall become final. Failure to request a hearing shall not constitute a waiver by the complainant of the complainant's right thereafter to contest the corporation's action in disposing of the complaint in an appropriate judicial proceeding.

(c) If the complainant shows good cause for failing to proceed in accordance with the informal procedure to the hearing officer or hearing panel, the provision of subsection (a) may be waived by the

hearing officer or hearing panel. [Eff]
(Auth: 24 CFR §966.52; HRS §§201G-4) (Imp: 24 CFR
§966.55; HRS §201G-4)

§17-2021-12 Selection of hearing officer or
hearing panel. [~~Grievances shall be presented before
a hearing officer or hearing panel. A hearing officer
or hearing panel shall be selected as follows:~~

- ~~(1) The hearing officer shall be an impartial,
disinterested person selected jointly by the
corporation and the complainant. If the
corporation and the complainant cannot agree
on a hearing officer, they shall each
appoint a member of a hearing panel and the
member so appointed shall select a third
member. If the third member cannot be
agreed to, such member shall be appointed by
an independent arbitration organization or
any other third party agreed upon by the
corporation and the complainant;~~
- ~~(2) In lieu of the procedures set forth in
paragraph (1), the corporation may provide
for the appointment of a hearing officer or
hearing panel by any method which is
approved by the majority of tenants in any
building, group of buildings, project, or
group of projects to which the method is
applicable voting in an election or meeting
of tenants held for the purpose;~~
- ~~(3) The corporation shall consult the project's
tenant organization before the appointment
of each hearing officer or hearing panel
member. Any comments or recommendations
submitted by the tenant organization shall
be considered by the corporation before the
appointment.]~~

(a) A grievance hearing shall be conducted by an
impartial person or persons appointed by the
corporation after consultation with resident
organizations, as described below:

- (1) The corporation shall nominate a slate of impartial persons to sit as hearing officers or hearing panel members. Such persons may include board members, corporation staff members, residents, professional arbitrators or mediators, or others. The initial slate of nominees shall consist of at least nine persons.
- (2) The corporation will check with each nominee to determine whether there is an interest in serving as a hearing officer or panel member, whether the nominee feels fully capable of impartiality, whether the nominee can serve without compensation, and what limitations on the nominee's time would affect such service.
- (3) Nominees shall disqualify themselves from hearing grievances that involve personal friends, other residents of public housing projects in which they work or reside, or grievances in which they have some personal interest.
- (4) Nominees who are not interested in serving as hearing officers or whose time is too limited to make service practical will be withdrawn and other names will be substituted.
- (b) The slate of potential hearing officers or hearing panel members nominated by the corporation shall be submitted to the corporation's resident organizations. Written comments from the organizations shall be considered by the corporation before the nominees are appointed as hearing officers or panel members.
- (c) When the comments from the resident organizations have been received and considered, the nominees will be informed that they are the corporation's official grievance hearing committee. The corporation will subsequently contact committee members in random order to request their participation as hearing panel members or hearing officers.

[Eff] (Auth: 24 CFR §966.52, §966.55;
HRS §§201G-4) (Imp: 24 CFR §966.55; HRS §201G-4)

§17-2021-13 Escrow deposit. (a) Before a hearing is scheduled in any grievance involving the amount of rent which the corporation claims is due, the complainant shall pay to the corporation the amount of rent due and payable as of the first of the month preceding the month in which the act or failure to act took place. The complainant shall thereafter deposit the same amount of the monthly rent in an escrow account monthly until the complaint is resolved by decision of the hearing officer or hearing panel.

(b) The requirements in subsection (a) may be waived by the corporation, and unless so waived, the failure to make the payments shall result in a termination of the grievance procedure, provided that failure to make the payments shall not constitute a waiver of any right the complainant may have to contest the corporation's disposition of the complainant's grievance in any appropriate judicial proceeding. [Eff] (Auth: 24 CFR §966.52; HRS 201G-4) (Imp: 24 CFR §966.55)

§17-2021-14 Scheduling of hearings. Upon complainant's compliance with sections 17-2021-11 and 17-2021-13, and selection of a hearing officer or hearing panel pursuant to section 17-2021-12, a hearing shall be scheduled by the hearing officer or hearing panel ~~[within twenty-eight business days after receipt of comments and recommendations of the project's tenant association regarding the appointment of a hearing officer or panel pursuant to subsection 17-2021-12-(3), Hawaii Administrative Rules,]~~ for a time and place reasonably convenient to both the complainant and the corporation. A written notification specifying the time, place, and procedures governing the hearing shall be delivered to the complainant and the appropriate official of the corporation. [Eff] (Auth: 24 CFR

§966.52; HRS §201G-4) (Imp: 24 CFR §966.55; HRS §201G-4)

SUBCHAPTER 3

HEARING PROCEDURE

§17-2021-20 Procedures governing the hearing.

(a) The hearing shall be held before a hearing officer or hearing panel, as appropriate.

(b) The complainant shall be afforded a fair hearing providing the basic safeguards of due process which shall include:

- (1) The opportunity to examine before the hearing and, at the expense of the complainant, to copy all documents, records, and rules of the corporation that are relevant to the hearing. Any document not made available after request by the complainant may not be relied on by the corporation at the hearing.
- (2) The right to be represented by counsel or other person chosen as the complainant's representative;
- (3) The right to a private hearing unless the complainant requests a public hearing;
- (4) The right to present evidence and arguments in support of the complaint, to controvert evidence relied on by project management, and to confront and cross-examine all witnesses on whose testimony or information the project management relies; and
- (5) A decision based solely and exclusively upon the facts presented at the hearing.

(c) The hearing officer or hearing panel may render a decision without proceeding with the hearing if the hearing officer or hearing panel determines that the issue has been previously decided in another proceeding.

(d) If the complainant or the corporation fails to appear at the hearing, the hearing officer or hearing panel may make a determination to postpone the hearing for a period not to exceed five business days or may make a determination that the party has waived the party's right to a hearing. Both the complainant and the corporation shall be notified of the determination by the hearing officer or hearing panel, provided that a determination that the complainant has waived the complainant's right to a hearing shall not constitute a waiver of any right the complainant may have to contest the corporation's disposition of the grievance in an appropriate judicial proceeding.

(e) The complainant must first show that the complainant is entitled to the relief sought and thereafter the corporation must sustain the burden of justifying the corporation's action or failure to act against which the complaint is directed.

(f) The hearing shall be conducted informally by the hearing officer or hearing panel and oral or documentary evidence pertinent to the facts and issues raised by the complaint may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings. The hearing officer or hearing panel shall require the corporation, the complainant, counsel, and other participants or spectators to conduct themselves in orderly fashion. Failure to comply with the directions of the hearing officer or hearing panel to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.

(g) The complainant or the corporation may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of the transcript. [Eff] (Auth: 24 CFR §966.52; HRS §§201G-4) (Imp: 24 CFR §966.56)

§17-2021-21 Decision of the hearing officer or hearing panel. (a) The hearing officer or hearing panel shall prepare a written decision, together with the reasons therefor, within a reasonable time after the hearing. A copy of the decision shall be sent to the complainant and the corporation. A copy of the decision with all names and identifying references deleted, shall also be maintained on file by the corporation and made available for inspection by a prospective complainant, the complainant's representative, the hearing panel, or the hearing officer.

(b) The decision of the hearing officer or hearing panel shall be binding on the corporation which shall take all actions or refrain from any action, necessary to carry out the decision unless the corporation determines within thirty days of the written decision and promptly notifies the complainant of its determination, that:

- (1) The grievance does not concern the corporation's action or failure to act in accordance with or involving the complainant's rental agreement or the corporation's rules, which adversely affect the complainant's rights, duties, welfare, or status; or
- (2) The decision of the hearing officer or hearing panel is contrary to applicable federal, state, or local law, Department of Housing and Urban Development regulations, or requirements of the annual contributions contract between Department of Housing and Urban Development and the corporation.

(c) A decision by the hearing officer, hearing panel, or corporation in favor of the corporation or which denies relief requested by the complainant in whole or in part shall not constitute a waiver of, nor affect in any manner whatever, any rights the complainant may have to a trial de novo or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

(d) If the complainant has requested a hearing on a complaint involving the corporation's notice of proposed termination of the tenancy and the hearing officer or hearing panel upholds the corporation's action to terminate the tenancy, the corporation shall not commence an eviction [~~action in a court~~] proceeding until it has served a notice to vacate on the complainant. In no event shall the notice to vacate be issued prior to the decision of the hearing officer or the hearing panel having been mailed or delivered to the complainant. The notice to vacate shall be in writing and shall specify that if the complainant fails to quit the premises within the applicable statutory period, or on the termination date stated in the notice of termination, whichever is later, appropriate action will be brought against the complainant and the complainant may be required to pay court cost and attorney fees. [Eff _____]
(Auth: 24 CFR §966.52; HRS §201G-4) (Imp: 24 CFR §966.57; HRS §201G-4; section (d) added pursuant to TILEIA v. CHANG, Civ. No. 79-0107)

SUBCHAPTER 4

EXPEDITED GRIEVANCE PROCEDURES

§17-2021-30 Applicability. (a) The expedited grievance procedure is established for any grievance concerning a termination of tenancy or eviction that involves:

- (1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the corporation's public housing premises by other residents or employees of the corporation, or
- (2) Any drug-related criminal activity on or near such premises.

(b) The informal settlement of grievances pursuant to §17-2021-10 is not applicable under the expedited grievance procedure. [Eff _____]

(Auth: 24 C.F.R. §966.52; HRS §201G-4) (Imp: 24 C.F.R. §966.55)

§17-2021-31 Request for hearing - expedited grievance. The complainant shall submit a written request for grievance hearing to the project office within ten days from the date of the written notice of violation from management. The written request shall specify:

- (1) The reasons for the grievance; and
- (2) The action or relief sought.

[Eff] (Auth: 24 C.F.R. §966.52; HRS §201G-4) (Imp: 24 C.F.R. §966.55)

§17-2021-32 Selection of hearing officer or hearing panel - expedited grievance. The hearing officer or hearing panel shall be selected as described in section 17-2021-12.

[Eff] (Auth: 24 C.F.R. §966.52; HRS §201G-4) (Imp: 24 C.F.R. §966.55)

§17-2021-33 Failure to request a hearing - expedited grievance. If the complainant does not request a grievance hearing as set forth under this expedited grievance procedure, then the corporation's disposition of the grievance shall become final, provided that failure to request a grievance hearing shall not constitute a waiver of the complainant's right to contest the corporation's disposition of the grievance in a court of competent jurisdiction.

[Eff] (Auth: 24 C.F.R. §966.52; HRS §201G-4) (Imp: 24 C.F.R. §966.55)

§17-2021-34 Scheduling of hearings - expedited grievance. Once the complainant has requested a grievance hearing under this section, the hearing officer or hearing panel shall promptly schedule a hearing for a time and place reasonably convenient to

both the complainant and the corporation. A written notification specifying the time, place, and procedures governing the hearing shall be delivered to the complainant and the corporation.

[Eff] (Auth: 24 C.F.R. §966.52; HRS §201G-4) (Imp: 24 C.F.R. §966.55)

§17-2021-35 Decision of the hearing officer or hearing panel - expedited grievance. The decision of the hearing officer or hearing panel shall be in accordance with section 17-2021-21. [Eff] (Auth: 24 C.F.R. §966.52; HRS §201G-4) (Imp: 24 C.F.R. §966.55)

DEPARTMENT OF HUMAN SERVICES

The compilation of chapter 2021, title 17, Hawaii Administrative Rules, on the Summary Page dated _____ were adopted on _____ following public hearings held on _____, after public notice was given in The Honolulu Star-Bulletin, Hawaii Tribune Herald, West Hawaii Today, The Garden Isle, and The Maui Times on _____.

They shall take effect ten days after filing with the Office of the Lieutenant Governor.

CHARLES A. STED, Chairperson
Housing and Community
Development Corporation of
Hawaii

APPROVED AS TO FORM:

Deputy Attorney General

APPROVED:

LINDA LINGLE
Governor
State of Hawaii

Dated: _____

Filed

DEPARTMENT OF HUMAN SERVICES

Adoption of Chapter 17-2021
Hawaii Administrative Rules

_____, 2004

1. Chapter 183 of Title 15, Hawaii Administrative Rules, entitled "Grievance Procedure" is repealed.

2. Chapter 2021 of Title 17, Hawaii Administrative Rules, entitled "Grievance Procedure" is adopted to read as follows: